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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,436	01/25/2002	Atanas Stoyanov	064754-0012	9655

33401 7590 08/01/2007

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EXAMINER	
CHANDLER, SARA M	

ART UNIT	PAPER NUMBER
3693	

MAIL DATE	DELIVERY MODE
08/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/057,436	STOYANOV ET AL.	
	Examiner	Art Unit	
	Sara Chandler	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *4-6,11-13 and 18-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *4-6,11-13 and 18-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 11/18/02
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's arguments and request for reconsideration of application 10/057,436 (01/26/02) filed on 06/05/07.

Applicant's election of Invention II, claims 4-6, 11-13 and 18-20 in the reply filed on 06/05/07 is acknowledged.

Re I, III and IV: Applicant's election without traverse is acknowledged.

Re V: Applicant's alleged traversal of the election/restriction between Inventions II and V is acknowledged.

This is not found persuasive because Inventions II and V are distinct. The highest profit referred to with respect to Invention II applies to a particular customer and one particular vehicle (e.g., the vehicle to customer is interested in). Invention V applies to the highest profit calculated by looking at a plurality of vehicles (e.g., all vehicles in the system, variety of vehicle models etc.). The program that produces the highest profit with respect to one customer and one vehicle will not necessarily be the same program that produces the highest profit with respect to a plurality of vehicles. Furthermore, the highest profit in Invention V requires the additional constraint of the amount of cash available for loan inception fees.

Furthermore, it is noted that the traversal was incomplete. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

Claim Interpretation

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

> Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
>
> Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. See MPEP 2106 II C. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result (e.g., "*for* _____"), but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result (e.g., "*for* _____"), but does not result in a structural difference between the claimed invention and the prior art. In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as "*if, may, might, can could*", as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as "*wherein, whereby*", that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

> USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.
>
> The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:
>
> (A) statements of intended use or field of use,
> (B) "adapted to" or "adapted for" clauses,
> (C) "wherein" clauses, or
> (D) "whereby" clauses.
>
> See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Each named inventor has not signed the Oath or Declaration.

Applicant has not given a post office address anywhere in the application papers as required by 37 CFR 1.33(a), which was in effect at the time of filing of the oath or declaration. A statement over applicant's signature providing a complete post office address is required.

Claim Objections

Claims 5 and 12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

A proper dependent claim shall not conceivably be infringed by anything which would not also infringe the basic claim. See MPEP §608.01(n), Section III.

Dependent claims 5 and 12 recite:

Re Claim 5: A computer system configured to perform the method of claim 4, the computer system comprising:
computer storage media containing software that is programmed according to the method;
a computer processor which, under control of the software, causes the method to be performed;
a peripheral input device for receiving data according to the method; and

a computer display device for reporting results of the performed method to a user of the computer system.

Re Claim 12: A computer system configured to perform the method of claim 11, the computer system comprising:
computer storage media containing software that is programmed according to the method;
a computer processor which, under control of the software, causes the method to be performed;
a peripheral input device for receiving data according to the method; and
a computer display device for reporting results of the performed method to a user of the computer system.

Applying the infringement test, what is needed to infringe claims 5 and 12, for example is a system for applying the steps of claims 4 and 11, respectively. However, the system of claims 5 and 12, respectively, would **not** infringe the method steps of claims 4 and 11, respectively, since the system itself never performs any of the active steps of receiving, accessing, calculating etc. required by the method. In other words, mere possession of such a system would infringe claims 5 and 12, respectively, but this is not enough to infringe claims 4 and 11. As a result, claims 5 and 12 are improper dependent claims.

Re Claims 4, 11: "highest profit" should be – highest calculated profit amount --.

Re Claim 18: "entered, collected information" should be -- collected and entered information --.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6,11-13 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claims 4,6,11 and 13: The preamble of claims 4 and 11 recites "the highest profit for a particular vehicle" however, there is no correlation between the claim limitations and a vehicle. Since claims 6 and 13 are drawn to the same invention, the same deficiency exists.

Re Claims 4,6,11 and 13: The claims are rejected as being incomplete for omitting essential steps or elements, such omission amounting to a gap between the steps or elements. See MPEP § 2172.01. The omitted steps or elements are: The preamble of 4 and 11 recite "selecting, from a plurality of retail finance programs, a retail finance program that generates a highest profit for a particular vehicle" however, this is not done. Claims 6 and 13 also fail to accomplish this result.

Claims 4,6,11 and 13 recite the limitation "the customer". There is insufficient antecedent basis for this limitation in the claim.

Re Claim 18: The claim recites, "the computer processing device being configured to perform the remaining steps of the method of claim 11." It is unclear what these steps are.

Dependent claims are further rejected based on the same rationale as the claims from which they depend.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11-13 and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker, US Pub. No. 2002/0107765.

Re Claims 11-13 and 18-20: Walker discloses a method/system/computer readable storage media containing software for selecting, from a plurality of retail finance programs, a retail finance program that generates a highest profit for a particular vehicle, the method/system/computer readable storage media containing software comprising:

receiving financial data associated with the customer (Walker, abstract, Figs. 1-5, [0001] thru [0094]);

accessing a database stored in a computer system, the database comprising information about a plurality of retail finance programs (Walker, abstract, Figs. 1-5, [0001] thru [0094]);;

calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data as a constraint (Walker, abstract, Figs. 1-5, [0001] thru [0094]);

comparing the calculated profit amounts (Walker, abstract, Figs. 1-5, [0001] thru [0094]); and

reporting which of the plurality of retail finance programs has the highest calculated profit amount (Walker, abstract, Figs. 1-5, [0001] thru [0094]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker, US Pub. No. 2002/0107765 in view of Sheets, US Pub. No. 2001/0049653.

Re Claims 4-6: Walker discloses a method/system/computer readable storage media containing software for selecting, from a plurality of retail finance programs, a retail finance program that generates a highest profit for a particular vehicle, the method comprising:

receiving financial data associated with the customer (Walker, abstract, Figs. 1-5, [0001] thru [0094]);

accessing a database stored in a computer system, the database comprising information about a plurality of retail finance programs (Walker, abstract, Figs. 1-5, [0001] thru [0094]);

calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data as a constraint (Walker, abstract, Figs. 1-5, [0001] thru [0094]);

comparing the calculated profit amounts (Walker, abstract, Figs. 1-5, [0001] thru [0094]); and

reporting which of the plurality of retail finance programs has the highest calculated profit amount (Walker, abstract, Figs. 1-5, [0001] thru [0094]).

Walker fails to explicitly disclose:

receiving a target monthly payment amount; and

calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data and the target monthly payment amount as constraints.

Sheets discloses:

receiving a target monthly payment amount (Sheets, abstract, Figs. 1-5; [0001] thru [0005]; [0008] thru [0014]; [0017] [0018] [0027] [0031] [0032] [0035] [0036] [0042] [0044] [0051]); and

calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data and the target monthly

payment amount as constraints (Sheets, abstract, Figs. 1-5; [0001] thru [0005]; [0008] thru [0014]; [0017] [0018] [0027] [0031] [0032] [0035] [0036] [0042] [0044] [0051]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker by adopting the teachings of Sheets to provide a method/system/computer readable storage media containing softer further comprising: receiving a target monthly payment amount; and calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data and the target monthly payment amount as constraints.

As suggested by Sheets, one would have been motivated to provide customers with information they want and need; allow them to save time by focusing on cars they can afford; and provide information to customers quickly and efficiently.

Remarks

The following are a couple examples regarding drafting the claims. If there are any questions please contact the Examiner.

Software _____, the software being embodied in computer readable media and when executed operable to:
receive _____:
access _____; and
calculate ._____.

A computer system _____,, comprising:
a processor system _____;
a database system _____;
and wherein the processor system is programmed to:
receive_____;

analyze_____; and
calculate.

A computer system_____, comprising:
means for receiving_____;
means for accessing-_____; and
means for calculating_____.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following US Pat. No.'s and US Pat. Pub. No.'s relate to automobile financing and/or lending/financing:

("20020052778"|"20020065707"|"4736294"|"5774873"|"5826240"|"5940812"|"5966699"|"6006201"|"6029149"|"6041310"|"6125356"|"6208979"|"6263320"|"6385594"|"6460020"|"6502080"|"6587841"|"6609108"|"6622131"|"6654726"|"6823319"|"6895388"|"6901430"|"6922675"|"7181427"|"7194436"|"7206756").PN.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Chandler whose telephone number is 571-272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC

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